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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Number 2013-262

13 **NICOLE MARIE KROENER**  
3239 Flintdale Drive  
San Jose, California 95148

**A C C U S A T I O N**

14 **Registered Nurse License Number 716363**  
15 **Public Health Nurse Certificate Number**  
16 **72716**

Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

21 1. Complainant Louise R. Bailey, M.Ed., R.N, brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing (Board),  
23 Department of Consumer Affairs.

24 2. On or about November 30, 2007, the Board issued Registered Nurse License Number  
25 716363 to respondent Nicole Marie Kroener. This registered nurse license was in full force and  
26 effect at all times relevant to the charges brought in this Accusation and will expire on April 30,  
27 2013, unless renewed.

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3. On or about January 3, 2008, the Board issued Public Health Nurse Certificate Number 72716 to respondent. This public health nurse certificate was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2013, unless renewed.

## JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b), provides:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2750 provides:

“Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof. Code, § 2700 et seq.)]. As used in this article, ‘license’ includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein.”

7. Section 2764 provides:

“The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the

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1 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
2 against such license, or to render a decision suspending or revoking such license.”

### 3 STATUTORY PROVISIONS

4 8. Section 2761 provides, in pertinent part:

5 “The board may take disciplinary action against a certified or licensed nurse or deny an  
6 application for a certificate or license for any of the following:

7 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

8 “(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing  
9 functions.”

10 9. Section 2762 provides, in pertinent part:

11 “In addition to other acts constituting unprofessional conduct within the meaning of this  
12 chapter [the Nursing Practice Act] it is unprofessional conduct for a person licensed under this  
13 chapter to do any of the following:

14 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
15 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
16 administer to another, any controlled substance as defined in Section 4022.

17 “(b) Use any controlled substance as defined in Division 10 (commencing with Section  
18 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
19 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
20 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
21 ability to conduct with safety to the public the practice authorized by his or her license.

22 ...

23 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any  
24 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this  
25 section.”

26 10. Health and Safety Code section 11173 provides, in pertinent part:

27 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
28 to procure the administration of or prescription for controlled substances,

1 “(1) by fraud, deceit, misrepresentation, or subterfuge; or

2 “(2) by the concealment of a material fact.”

3 11. Health and Safety Code section 11192 provides:

4 “In a prosecution for a violation of Section 11190, proof that a defendant received or has  
5 had in his possession at any time a greater amount of controlled substances than is accounted for  
6 by any record required by law or that the amount of controlled substances possessed by a  
7 defendant is a lesser amount than is accounted for by any record required by law is prima facie  
8 evidence of a violation of the section.”

9 12. Health and Safety Code section 11350, subdivision (a), provides:

10 “Except as otherwise provided in this division, every person who possesses (1) any  
11 controlled substance specified I subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
12 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
13 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
14 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
15 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
16 licensed to practice in this state shall be punished by imprisonment pursuant to subdivision (h) of  
17 Section 1170 of the Penal Code.”

18 13. Health and Safety Code section 11371.1 provides:

19 “Any person who shall knowingly violate any of the provisions of Section 11173 or 11374  
20 with respect to (a) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055,  
21 or (2) a controlled substance specified in paragraph (a) of subdivision (b) of Section 11056, or (3)  
22 a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any  
23 voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such  
24 minor shall commit any such offence, shall be punished by imprisonment pursuant to subdivision  
25 (h) or Section 1170 of the Penal Code, or in a county jail not exceeding one year.”

26 14. Health and Safety Code section 11550, subdivision (a), provides:

27 “No person shall use, or be under the influence of any controlled substance which is (1)  
28 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,

1 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified  
2 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)  
3 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in  
4 Schedule III, IV, or V, except when administered by or under the direction of a person licensed  
5 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of  
6 the defense to show that it comes under the exception. Any person convicted of violating this  
7 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90  
8 days or more than one year in a county jail. The court may place a person convicted under this  
9 subdivision on probation for a period not to exceed five years and, except as provided in  
10 subdivision (c), shall in all cases in which probation is required, as a condition thereof, that  
11 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision  
12 (c), in no event shall the court have the power to absolve a person who violates this subdivision  
13 from the obligation of spending at least 90 days in confinement in a county jail."

14 15. Penal Code section 459 provides, in pertinent part:

15 "Every person who enters any house, room, apartment, tenement, shop, warehouse, store,  
16 mill, barn, stable, outhouse or other building, tent, vessel . . . with intent to commit grand or petit  
17 larceny or any felony is guilty of burglary."

18 16. Penal Code section 461 provides, in pertinent part:

19 "Burglary is punishable as follows:

20 . . .

21 "(b) Burglary in the second degree: by imprisonment in the county jail not exceeding one  
22 year or imprisonment pursuant to subdivision (h) or Section 1170."

23 17. Penal Code section 488 provides:

24 "Theft in other cases is petty theft."

25 18. Penal Code section 490 provides:

26 "Petty theft is punishable by fine not exceeding one thousand dollars (\$1000), or by  
27 imprisonment in the county jail not exceeding six months, or both."

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1 19. California Code of Regulations, title 16, section 1442 provides:

2 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure  
3 from the standard of care which, under similar circumstances, would have ordinarily been  
4 exercised by a competent registered nurse. Such an extreme departure means the repeated failure  
5 to provide nursing care as required or failure to provide care or to exercise ordinary precaution in  
6 a single situation which the nurse knew, or should have known, could have jeopardized the  
7 client's health or life."

### 8 COST RECOVERY

9 20. Section 125.3, subdivision (a), provides:

10 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
11 proceeding before any board within the department or before the Osteopathic Medical Board,  
12 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
13 licensee found to have committed a violation or violations of the licensing act to pay a sum not  
14 to exceed the reasonable costs of the investigation and enforcement of the case.

15 ...

16 "(i) Nothing in this section shall preclude a board from including the recovery of the costs  
17 of investigation and enforcement of a case in any stipulated settlement."

### 18 DRUGS

19 21. "Fentanyl" is a Schedule II controlled substance pursuant to Health and Safety Code  
20 section 11055, subdivision (c)(8), and is a dangerous drug within the meaning of Business and  
21 Professions Code section 4022. It is a narcotic (opioid) analgesic and is used for producing  
22 anesthesia for surgery and treating pain before, during, and after surgery. It is physically and  
23 psychologically addictive.

24 22. "Hydromorphone" ("Dilaudid") is a Schedule II controlled substance pursuant to  
25 Health and Safety Code section 11055, subdivision (b)(1)(J), and is a dangerous drug within the  
26 meaning of Business and Professions Code section 4022. It is in a group of drugs called narcotic  
27 pain relievers, or opioids, and is similar to morphine. It is used to treat moderate to severe pain.

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23. "Morphine" is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(L), and is a dangerous drug within the meaning of Business and Professions Code section 4022. It is in a group of drugs called narcotic pain relievers, or opioids, and is used to treat moderate to severe pain.

24. "Oxycodone" ("OxyContin") is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and is a dangerous drug within the meaning of Business and Professions Code section 4022. It is an opiate agonist that acts like morphine and is used for pain relief.

25. "Stadol" ("Butorphanol") is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (c)(3), and is a dangerous drug within the meaning of Business and Professions Code section 4022. It is a trade name for butorphanol tartrate, a synthetically-derived opioid agonist-antagonist analgesic used for pain relief.

26. "Pyxis" and "Omnicell" are trade names for automated single-unit dose medication dispensing systems that record information such as patient name, physician orders, date, and time medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a "user ID" code to operate the control panel. The user is required to enter a second code "PIN" number, similar to an ATM machine, to gain access to the medications. Sometimes only portions of the withdrawn narcotics are given to the patient. The portions not given to the patient are referred to as wastage. This waste must be witnessed by another authorized user and is also recorded by the Omnicell or Pyxis machine.

## FACTUAL BACKGROUND

**SMBH**

27. On or about June 28, 2007, respondent began employment as a Registered Nurse with Sharp Mary Birch Hospital (SMBH) in San Diego, California.

28. On or about November 12, 2008, two open Fentanyl ampoules were found in the toilet in the staff lounge; a syringe and needle also were found in the trash. A medication discrepancy report revealed a significant variance in the activity of respondent's use of Fentanyl.

29. While the investigation into this matter was pending, respondent resigned from

SMBH in lieu of termination on or about December 9, 2008.

30. The investigation of the time period of July 1 through December 3, 2008, revealed gross discrepancies and inconsistencies between respondent's Pyxis records and the corresponding patient records. Examples of these discrepancies and inconsistencies are as follows:

A. Patient 1<sup>1</sup>

Time/Respondent's Pyxis Record	Medication Administration Record (MAR)	Nursing notes
11-7-08	11-7-08	11-7-08
0147: removed 200 mcg Fentanyl	0218: administered 50 mcg Fentanyl	Not noted
0250: removed 100 mcg Fentanyl	0300: administered 50 mcg Fentanyl	Not noted
0728: removed 100 mcg Fentanyl	Not charted	Not noted

1) On November 7, 2008, at 1:47 a.m., respondent removed 200 mcg Fentanyl from Pyxis. She recorded on the Medication Administration Report (MAR) administering 50 mcg Fentanyl at 2:18 a.m. She failed to account for the disposition of 150 mcg Fentanyl on any record.

2) On November 7, 2008, at 2:50 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She recorded on the MAR administering 50 mcg at 3:00 a.m. She failed to account for the disposition of 50 mcg Fentanyl on any record.

3) On November 7, 2008, at 7:28 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

B. Patient 2

Time/Respondent's Pyxis Record	MAR	Nursing notes
11-23-08	11-23-08	11-23-08
1908: removed 100 mcg Fentanyl	Not charted	Not noted
1932: removed 100 mcg Fentanyl	Not charted	Not noted
2308: removed 200 mcg Fentanyl	Not charted	Not noted

1) On November 23, 2008, at 7:08 p.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

<sup>1</sup> The patient names will be released pursuant to a discovery request.



2) On November 23, 2008, at 7:32 p.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

3) On November 23, 2008, at 11:08 p.m., respondent removed 200 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

**C. Patient 3**

Time/Respondent's Pyxis Record	MAR	Nursing notes
<b>11-13-08</b>	<b>11-13-08</b>	<b>11-13-08</b>
1930: removed 200 mcg Fentanyl	Not charted	Not noted
1943: removed 200 mcg Fentanyl	Not charted	Not noted

1) On November 13, 2008, at 7:30 p.m., respondent removed 200 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

2) On November 13, 2008, at 7:43 p.m., respondent removed 200 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

**D. Patient 4**

Time/Respondent's Pyxis Record	MAR	Nursing notes
<b>11-12-08</b>	<b>11-12-08</b>	<b>11-12-08</b>
1959: removed 200 mcg Fentanyl	Not charted	Not noted
2242: removed 100 mcg Fentanyl	Not charted	Not noted
2341: removed 100 mcg Fentanyl	Not charted	Not noted
<b>11-13-08</b>	<b>11-13-08</b>	<b>11-13-08</b>
0505: removed 200 mcg Fentanyl	Not charted	Not noted
0610: removed 200 mcg Fentanyl	Not charted	Not noted

1) On November 12, 2008, at 7:59 p.m., respondent removed 200 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

2) On November 12, 2008, at 10:42 p.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

3) On November 12, 2008, at 11:41 p.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

4) On November 13, 2008, at 5:05 a.m., respondent removed 200 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

5) On November 13, 2008, at 6:10 a.m., respondent removed 200 mcg Fentanyl from

Pyxis. She failed to account for its disposition on any record.

E. Patient 5

Time/Respondent's Pyxis Record	MAR	Nursing notes
11-8-08	11-8-08	11-8-08
0048: removed 200 mcg Fentanyl	0049: wasted	Not noted
0137: removed 100 mcg Fentanyl	Not charted	Not noted
0245: removed 100 mcg Fentanyl	Not charted	Not noted
0335: removed 100 mcg Fentanyl	Not charted	Not noted
0359: removed 100 mcg Fentanyl	Not charted	Not noted
0541: removed 100 mcg Fentanyl	Not charted	Not noted
0606: removed 100 mcg Fentanyl	Not charted	Not noted
0744: removed 100 mcg Fentanyl	Not charted	Not noted

1) On November 8, 2008, at 12:48 a.m., respondent removed 200 mcg Fentanyl from Pyxis. She recorded on the MAR wasting it at 12:49 a.m.

2) On November 8, 2008, at 1:37 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

3) On November 8, 2008, at 2:45 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

4) On November 8, 2008, at 3:35 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

5) On November 8, 2008, at 3:59 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

6) On November 8, 2008, at 5:41 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

7) On November 8, 2008, at 6:06 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

8) On November 8, 2008, at 7:44 a.m., respondent removed 100 mcg Fentanyl from Pyxis. She failed to account for its disposition on any record.

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1 **CCRMC**

2 31. Respondent was employed by Contra Costa Regional Medical Center (CCRMC) in  
3 Martinez, California, as a registered nurse from about November 23, 2009, until she resigned or  
4 was terminated on or about February 8, 2010.

5 32. A routine audit of respondent's narcotic reports showed discrepancies between her  
6 narcotic pulls in the hospital's Omnicell records and the documentation of administration in  
7 patients' medical records. A thorough investigation of the time period of January 15 through  
8 February 5, 2010, revealed gross discrepancies and inconsistencies between respondent's  
9 Omnicell records and the corresponding patient records. Examples of these discrepancies and  
10 inconsistencies are as follows:

11 **A. Patient A**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>1-26-10</b>				
2325: epidural order				
<b>1-27-10</b>	<b>1-27-10</b>	<b>1-27-10</b>	<b>1-27-10</b>	<b>1-27-10</b>
Fentanyl 100 mcg IV q 1 hr prn.				0135: patient delivered
	0340: removed 100 mcg Fentanyl	Not charted	Not noted	
	0443: removed 100 mcg Fentanyl	Not charted	Not noted	
	0517: removed 100 mcg Fentanyl	Not charted	Not noted	
	0623: removed 100 mcg Fentanyl	Not charted	Not noted	

22 1) On January 26, 2010, at 11:25 p.m., a physician ordered an epidural. On January  
23 27, 2010, a physician ordered 100 mcg Fentanyl every hour as needed. The patient delivered at  
24 1:35 a.m.

25 2) On January 27, 2010, at 3:40 a.m., respondent removed 100 mcg Fentanyl from  
26 Omnicell. She failed to account for its disposition on any record.

27 3) On January 27, 2010, at 4:43 a.m., respondent removed 100 mcg Fentanyl from  
28

1 Omnicell. She failed to account for its disposition on any record.

2 4) On January 27, 2010, at 5:17 a.m., respondent removed 100 mcg Fentanyl from

3 Omnicell. She failed to account for its disposition on any record.

4 5) On January 27, 2010, at 6:23 a.m., respondent removed 100 mcg Fentanyl from

5 Omnicell. She failed to account for its disposition on any record.

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7 **B. Patient B**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
2-4-10	2-4-10	2-4-10	2-4-10	2-4-10
No orders				Patient not admitted
	0645: removed 200 mcg Fentanyl	Not charted	Not noted	
	0645: removed 2 tablets Oxycodone	Not charted	Not noted	

13 1) On February 4, 2010, there was no physician order for Fentanyl or Oxycodone and  
14 the patient was not admitted.

15 2) On February 4, 2010, at 6:45 a.m., respondent removed 200 mcg Fentanyl from  
16 Omnicell. She failed to account for its disposition on any record.

17 3) On February 4, 2010, at 6:45 a.m., respondent removed 2 tablets Oxycodone from  
18 Omnicell. She failed to account for its disposition on any record.

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C. Patient C

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>1-15-10</b>	<b>1-15-10</b>	<b>1-15-10</b>	<b>1-15-10</b>	
Stadol 2 mg IV q 1 hr prn.	2315: removed 100 mcg Fentanyl	Not charted	Not noted	
	<b>1-16-10</b>	<b>1-16-10</b>	<b>1-16-10</b>	<b>1-16-10</b>
	0004: removed 100 mcg Fentanyl	Not charted	Not noted	
	0021: removed 100 mcg Fentanyl	Not charted	Not noted	
	0021: removed 2 mg Butorphanol	0030: Stadol 2 mg IV	Administer 2 mg Stadol at 0030	
	0128: removed 100 mcg Fentanyl	Not charted	Not noted	
	0128: removed 2 mg Butorphanol	0130: Stadol 2 mg IV	Not noted	
	0232: removed 2 mg Butorphanol	Not charted	0250: MD approved Fentanyl in lieu of Stadol	
		0310: Fentanyl 50 mcg		
Received stadol				0436: patient delivered

- 1) On January 15, 2010, a physician ordered 2 mg Stadol every hour as needed.
- 2) On January 15, 2010, at 11:15 p.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.
- 3) On January 16, 2010, at 12:04 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.
- 4) On January 16, 2010, at 12:21 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.
- 5) On January 16, 2010, at 12:21 a.m., respondent removed 2 mg Butorphanol from Omnicell. She recorded on both the MAR and the nursing notes administering 2 mg Stadol at 12:30 a.m.
- 6) On January 16, 2010, at 1:28 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

7) On January 16, 2010, at 1:28 a.m., respondent removed 2 mg Butorphanol from Omnicell. She recorded on the MAR administering 2 mg Stadol at 1:30 a.m.

8) On January 16, 2010, at 2:32 a.m., respondent removed 2 mg Butorphanol from Omnicell. She failed to account for its disposition on any record.

9) On January 16, 2010, at 2:50 a.m., the nursing notes state, "MD states pt can have Fentanyl for pain relief but no more Stadol." Respondent recorded on the MAR 50 mcg Fentanyl at 3:10 a.m. At 4:36 a.m., the patient delivered. The physician's delivery note states that the patient "received Stadol during her delivery."

**D. Patient D**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
2-4-10				2-4-10
No orders				1000: patient discharged
	2-5-10	2-5-10	2-5-10	
	0247: removed 200 mcg Fentanyl	Not charted	Not noted	
	0247: removed 2 tablets Oxycodone	Not charted	Not noted	

1) On February 4, 2010, there was no physician order for Fentanyl or Oxycodone. The patient had been discharged at 10:00 a.m.

2) On February 5, 2010, at 2:47 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On February 5, 2010, at 2:47 a.m., respondent removed 2 tablets Oxycodone from Omnicell. She failed to account for its disposition on any record.

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E. Patient E

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes
<b>1-17-10</b>	<b>1-17-10</b>	<b>1-17-10</b>	<b>1-17-10</b>
Fentanyl 100 mcg IV q 1 hr prn.	2315: removed 100 mcg Fentanyl	Not charted	Not noted
	<b>1-18-10</b>	<b>1-18-10</b>	<b>1-18-10</b>
	0034: removed 100 mcg Fentanyl	Not charted	Not noted
	0111: removed 100 mcg Fentanyl	Not charted	Not noted
	0138: removed 100 mcg Fentanyl	Not charted	Not noted

1) On January 17, 2010, a physician ordered 100 mcg Fentanyl every hour as needed.

2) On January 17, 2010, at 11:15 p.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On January 18, 2010, at 12:34 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

4) On January 18, 2010, at 1:11 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

5) On January 18, 2010, at 1:38 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

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**F. Patient F**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes
<b>2-4-10</b>			
2305: epidural orders (no order for Fentanyl)			
	<b>2-5-10</b>	<b>2-5-10</b>	<b>2-5-10</b>
	0009: removed 200 mcg Fentanyl	Not charted	Not noted
	0009: removed 100 mcg Fentanyl	Not charted	Not noted
	0242: returned 100 mcg Fentanyl	Not charted	Not noted
	0647: removed 200 mcg Fentanyl	Not charted	Not noted

1) On February 4, 2010, a physician ordered an epidural, with no order for Fentanyl.

2) On February 5, 2010, at 12:09 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On February 5, 2010, at 12:09 a.m., respondent removed 100 mcg Fentanyl from Omnicell. At 2:42 a.m., she returned 100 mcg Fentanyl to Omnicell.

4) On February 5, 2010, at 6:47 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

**G. Patient G**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>2-3-10</b>				<b>2-3-10</b>
No orders				Patient discharged
	<b>2-5-10</b>	<b>2-5-10</b>	<b>2-5-10</b>	
	0008: removed 2 tablets Oxycodone	Not charted	Not noted	
	0135: removed 200 mcg Fentanyl	Not charted	Not noted	
	0533: removed 200 mcg Fentanyl	Not charted	Not noted	
				<b>3-1-10</b>
				Patient readmitted

1) On February 5, 2010, there was no physician order for Fentanyl or Oxycodone. The patient had been discharged on February 3, 2010, and was not readmitted until March 1,



2010.

2) On February 5, 2010, at 12:08 a.m., respondent removed 2 tablets Oxycodone from Omnicell. She failed to account for its disposition on any record.

3) On February 5, 2010, at 1:35 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

4) On February 5, 2010, at 5:33 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

**H. Patient H**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
				2-2-10
				2220: began epidural anesthesia
2-3-10	2-3-10	2-3-10	2-3-10	
Fentanyl 100 mcg IV q 1 hr prn.	0334: removed 100 mcg Fentanyl	Not charted	Not noted	
Stadol 2 mg IV q 1 hr prn.	0335: removed 2 tablets Oxycodone	Not charted	Not noted	
	0654: removed 200 mcg Fentanyl	Not charted	Not noted	
	0655: removed 2 tablets Oxycodone	Not charted	Not noted	
	2318: removed 200 mcg Fentanyl	Not charted	Not noted	
	2-4-10	2-4-10	2-4-10	2-4-10
	0017: removed 200 mcg Fentanyl	Not charted	Not noted	0030: transferred to operating room
				0115: delivered by Caesarean section
	0157: removed 200 mcg Fentanyl	Not charted	Not noted	
	0223: removed 10 mg Morphine	Not charted	Not noted	

1) On February 2, 2010, at 10:20 p.m., an epidural anesthesia was begun. On February 3, a physician ordered 100 mcg Fentanyl and 2 mg Stadol every hour as needed.

2) On February 3, 2010, at 3:34 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On February 3, 2010, at 3:35 a.m., respondent removed 2 tablets Oxycodone from Omnicell. She failed to account for its disposition on any record.

4) On February 3, 2010, at 6:54 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

5) On February 3, 2010, at 6:55 a.m., respondent removed 2 tablets Oxycodone from Omnicell. She failed to account for its disposition on any record.

6) On February 3, 2010, at 11:18 p.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

7) On February 4, 2010, at 12:17 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

8) On February 4, 2010, at 12:30 a.m., the patient was transferred to the operating room where she delivered by Caesarean section at 1:15 a.m.

9) On February 4, 2010, at 1:57 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

10) On February 4, 2010, at 2:23 a.m., respondent removed 10 mg Morphine from Omnicell. She failed to account for its disposition on any record.

**I. Patient I**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>2-2-10</b>	<b>2-2-10</b>	<b>2-2-10</b>	<b>2-2-10</b>	
Fentanyl 100 mcg IV q 1 hr prn.	2313: removed 2 tablets Oxycodone	Not charted	Not noted	
0010: epidural order	2314: removed 200 mcg Fentanyl	Not charted	Not noted	
	2347: removed 200 mcg Fentanyl	Not charted	Not noted	
	<b>2-3-10</b>	<b>2-3-10</b>	<b>2-3-10</b>	<b>2-3-10</b>
				0234: delivered by Caesarean section
	0239: removed 200 mcg Fentanyl	Not charted	Not noted	

1) On February 2, 2010, a physician ordered 100 mcg Fentanyl every hour as needed. At 12:10 a.m., a physician wrote epidural orders.

2) On February 2, 2010, at 11:13 p.m., respondent removed 2 tablets Oxycodone from Omnicell. She failed to account for its disposition on any record.

3) On February 2, 2010, at 11:14 p.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

4) On February 2, 2010, at 11:47 p.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

5) On February 3, 2010, at 2:34 a.m., the patient delivered by Caesarean section.

6) On February 3, 2010, at 2:39 a.m., respondent removed 200 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

**J. Patient J**

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>1-28-10</b>	<b>1-28-10</b>	<b>1-28-10</b>	<b>1-28-10</b>	<b>1-28-10</b>
Fentanyl 100 mcg IV q 1 hr prn.	0159: removed 100 mcg Fentanyl	Not charted	Not noted	Patient seen in clinic
Stadol 2 mg IV q 1 hr prn.	0332: removed 100 mcg Fentanyl	Not charted	Not noted	
	0440: removed 100 mcg Fentanyl	Not charted	Not noted	
	0548: removed 100 mcg Fentanyl	Not charted	Not noted	
				<b>1-29-10</b>
				Patient admitted

1) On January 28, 2010, a physician ordered 100 mcg Fentanyl and 2 mg Stadol every hour as needed. The patient was seen at the clinic and not admitted to the hospital.

2) On January 28, 2010, at 1:59 a.m., respondent removed 100 mcg Fentanyl by override from Omnicell. She failed to account for its disposition on any record.

3) On January 28, 2010, at 3:32 a.m., respondent removed 100 mcg Fentanyl by override from Omnicell. She failed to account for its disposition on any record.

4) On January 28, 2010, at 4:40 a.m., respondent removed 100 mcg Fentanyl by override from Omnicell. She failed to account for its disposition on any record.

5) On January 28, 2010, at 5:48 a.m., respondent removed 100 mcg Fentanyl by override from Omnicell. She failed to account for its disposition on any record.

6) On January 29, 2010, the patient was admitted to the hospital.

K. Patient K

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes
1-29-10	1-29-10	1-29-10	1-29-10
Fentanyl 100 mcg IV q 1 hr prn.	0002: removed 100 mcg Fentanyl	Not charted	Not noted
Stadol 2 mg IV q 1 hr prn.	0002: removed 2 mg Dilauidid	Not charted	Not noted
	0002: removed 250 ml bag Bupivacaine/Fentanyl	Not charted	Not noted
0100: epidural order – Bupivacaine 0.125 mg and Fentanyl 2 mcg/ml D/C previous analgesia orders Dilauidid 0.5 mg q 2-4 hrs prn.			
0235: post partum orders	0251: wasted 0.5 mg Dilauidid	Not charted	Not noted
	0256: removed 2 mg Dilauidid	Not charted	Not noted
	0257: wasted 0.5 mg Dilauidid	Not charted	Not noted
	0258: removed 100 mcg Fentanyl	Not charted	Not noted
	0326: wasted 225 ml bag Bupivacaine/Fentanyl	Not charted	Not noted
	0500: removed 2 mg Dilauidid	Not charted	0600: Dilauidid given as ordered
	0604: removed 100 mcg Fentanyl	Not charted	Not noted
	0613: removed 1 mg Dilauidid	Not charted	Not noted
	0613: wasted 0.5 mg Dilauidid	Not charted	Not noted
	0812: removed 2 mg Dilauidid	Not charted	Not noted

1) On January 29, 2010, a physician ordered 100 mcg Fentanyl and 2 mg Stadol every hour as needed.

2) On January 29, 2010, at 12:02 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On January 29, 2010, at 12:02 a.m., respondent removed 2 mg Dilauidid from Omnicell. At 2:51 a.m., she wasted 0.5 mg Dilauidid. She failed to account for 1.5 mg Dilauidid on any record.

4) On January 29, 2010, at 12:02 a.m., respondent removed 250 ml bag

1 Bupivacaine/Fentanyl from Omnicell. At 3:26 a.m., she wasted 225 ml bag Bupivacaine/Fentanyl.  
2 She failed to account 25 ml of this medication on any record.

3 5) On January 29, 2010, at 1:00 a.m., a physician wrote epidural orders: Bupivacaine  
4 0.125 mg and Fentanyl 2 mcg/ml, and an order for 0.5 mg Dilaudid every 2-4 hours as needed.  
5 Previous analgesia orders were discontinued. At 2:35 a.m., a physician wrote post partum orders.

6 6) On January 29, 2010, at 2:56 a.m., respondent removed 2 mg Dilaudid from  
7 Omnicell. At 2:57 a.m., she wasted 0.5 mg Dilaudid. She failed to account for the disposition of  
8 1.5 mg Dilaudid on any record.

9 7) On January 29, 2010, at 2:58 a.m., respondent removed 100 mcg Fentanyl from  
10 Omnicell. She failed to account for its disposition on any record.

11 8) On January 29, 2010, at 5:00 a.m., respondent removed 2 mg Dilaudid from  
12 Omnicell. At 6:00 a.m., she noted, "Dilaudid given as ordered."

13 9) On January 29, 2010, at 6:04 a.m., respondent removed 100 mcg Fentanyl from  
14 Omnicell. She failed to account for its disposition on any record.

15 10) On January 29, 2010, at 6:13 a.m., respondent removed 1 mg Dilaudid from  
16 Omnicell. At 6:13 a.m., she wasted 0.5 mg Dilaudid. She failed to account for the disposition of  
17 0.5 mg Dilaudid on any record.

18 11) On January 29, 2010, at 8:12 a.m., respondent removed 2 mg Dilaudid from  
19 Omnicell. She failed to account for its disposition on any record.

20 ///

L. Patient L

Physician's Notes	Time/Respondent's Omnicell Record	MAR	Nursing notes	Patient disposition
<b>1-25-10</b>	<b>1-25-10</b>	<b>1-25-10</b>	<b>1-25-10</b>	<b>1-25-10</b>
Fentanyl 100 mcg IV q 1 hr prn.				2010: patient delivered
Stadol 2 mg IV q 1 hr prn.				
2013: Fentanyl order discontinued	2315: removed 100 mcg Fentanyl	Not charted	Not noted	
	2353: removed 100 mcg Fentanyl	Not charted	Not noted	
	<b>1-26-10</b>	<b>1-26-10</b>	<b>1-26-10</b>	
	0039: removed 100 mcg Fentanyl	Not charted	Not noted	
	0311: removed 100 mcg Fentanyl	Not charted	Not noted	
	0628: removed 4 mg Morphine	Not charted	Not noted	
	0702: removed 100 mcg Fentanyl	Not charted	Not noted	

1) On January 25, 2010, a physician ordered 100 mcg Fentanyl and 2 mg Stadol every hour as needed. At 8:10 p.m., the patient delivered. At 8:13 p.m., a physician discontinued the order for Fentanyl.

2) On January 25, 2010, at 11:15 p.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

3) On January 25, 2010, at 11:53 p.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

4) On January 26, 2010, at 12:39 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

5) On January 26, 2010, at 3:11 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

6) On January 26, 2010, at 6:28 a.m., respondent removed 4 mg Morphine from Omnicell. She failed to account for its disposition on any record.

7) On January 26, 2010, at 7:02 a.m., respondent removed 100 mcg Fentanyl from Omnicell. She failed to account for its disposition on any record.

33. On or about September 16, 2010, respondent was interviewed and gave a detailed admission of diverting Fentanyl for her personal use. She stated that she began using Fentanyl because she suffers from Crohn's disease. She admitted diverting Fentanyl for her personal use from SMBH, CCRMC, and other medical facilities. She stated that she had diverted Fentanyl approximately 50 times since she had become a nurse. When confronted with the patient records summarized in paragraphs 30 and-32, she admitted that she had diverted the Fentanyl for her personal use from every patient listed, but denied diverting any other medications. Respondent also submitted to a drug screen during the interview, which tested positive for Marijuana and Oxycodone. She admitted to smoking Marijuana and taking her Percocet prescription within the week.

**FIRST CAUSE FOR DISCIPLINE**  
**Unprofessional Conduct: Incompetence or Gross Negligence**  
**(Bus. & Prof. Code, § 2761, subd. (a)(1))**

34. The allegations of paragraphs 27-33 are realleged and incorporated by reference as if fully set forth.

35. Respondent has subjected her license to disciplinary action for unprofessional conduct under section 2761, subdivision (a)(1). As set forth in paragraphs 27-33 above, she was incompetent or grossly negligent at CCRMC and SMBH by diverting Fenanty<sup>1</sup> for her own personal use.

**SECOND CAUSE FOR DISCIPLINE**  
**Unprofessional Conduct – Obtaining and Possessing**  
**Controlled Substances or Dangerous Drugs**  
**(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (a))**

36. The allegations of paragraphs 27-33 are realleged and incorporated by reference as if fully set forth.

37. Respondent has subjected her license to disciplinary action for unprofessional conduct under section 2761, subdivision (a), as defined by section 2762, subdivision (a). As set forth in paragraphs 27-33 above, she obtained and possessed controlled substances or dangerous drugs at CCRMC and SMBH in violation of the law.

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1                                   **THIRD CAUSE FOR DISCIPLINE**  
2                   **Unprofessional Conduct – Use of Controlled Substances or Dangerous Drugs**  
3                                   **(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (b))**

4           38.   The allegations of paragraphs 27-33 are realleged and incorporated by reference as if  
5 fully set forth.

6           39.   Respondent has subjected her license to disciplinary action for unprofessional  
7 conduct under section 2761, subdivision (a), as defined by section 2762, subdivision (b). As set  
8 forth in paragraphs 27-33 above, she used a controlled substance or dangerous drug, including but  
9 not limited to Fentanyl, to an extent or in a manner injurious to herself, any other person, or the  
10 public, or to the extent that it impaired her ability to conduct with safety to the public the practice  
11 of nursing.

12                                   **FOURTH CAUSE FOR DISCIPLINE**  
13                   **Unprofessional Conduct – Falsify, or Make Grossly Incorrect or Inconsistent Entries**  
14                                   **(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (e))**

15           40.   The allegations of paragraphs 27-33 are realleged and incorporated by reference as if  
16 fully set forth.

17           41.   Respondent has subjected her license to disciplinary action for unprofessional  
18 conduct under section 2761, subdivision (a), as defined by section 2762, subdivision (e). As set  
19 forth in paragraphs 27-33 above, she made false or grossly incorrect or inconsistent entries in  
20 hospital, patient, and other records pertaining to the withdrawal, administration, use, or  
21 disposition of controlled substances.

22                                   **PRAYER**

23           WHEREFORE, complainant Louise R. Bailey requests that a hearing be held on the matters  
24 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

25           1.   Revoking or suspending Registered Nurse License Number 716363 issued to Nicole  
26 Marie Kroener;

27           2.   Revoking or suspending Public Health Nurse Certificate Number 72716 issued to  
28 Nicole Marie Kroener;

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